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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/985,783	11/06/2001	Toshiyuki Kase	R2184.0109/P109	4516

24998 7590 08/26/2004

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP  
2101 L STREET NW  
WASHINGTON, DC 20037-1526

EXAMINER
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AGUSTIN, PETER VINCENT

ART UNIT	PAPER NUMBER
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2652

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/985,783	<b>Applicant(s)</b> KASE, TOSHIYUKI	
	<b>Examiner</b> Peter Vincent Agustin	<b>Art Unit</b> 2652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Drawings*

1. The drawings were received on July 20, 2004. These drawings are acceptable.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Kitamura et al. (hereafter Kitamura) (US 2002/0041554).

In regard to claim 1, Kitamura discloses an information recording and reproducing system (figure 1) comprising: a host device (A); and an information recording and reproducing device (B) connected with said host device via a host interface (8 & 16), the information recording and reproducing device including a data-recording interrupting-resuming unit (12 & 13) that performs a recording of data transferred from said host device via said host interface on a recording medium (C) at a predetermined data-writing velocity, and, in a case of having interrupted said recording, resumes said recording by linking an end point of said data upon the interruption with a start point of said data upon the resumption so as to maintain a continuity of said data (paragraphs 0016 & 0167), wherein said host device includes a control-command issuing unit (6) issuing a control command to said information recording and reproducing device, the control command causing said data-recording interrupting-resuming unit either to perform

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the interruption and resumption of the recording or not to perform the interruption and resumption of the recording (figure 2, step S1), said host device further comprising a test-writing unit (figure 6, element 10) causing said information recording and reproducing device to perform a test-writing to said recording medium at a predetermined writing velocity; an interruption-probability judging unit (figure 7, step S25; paragraph 0197) making a judgment on whether or not there is a probability of the interruption during a recording of data to said recording medium, according to a result of said test-writing; and said information recording and reproducing device includes a data-recording interruption-resumption control unit (15) controlling said data-recording interrupting-resuming unit either to perform-the interruption and resumption of the recording or not to perform the interruption and resumption of the recording (paragraph 0171), according to said control command received from said host device via said host interface.

In regard to claim 2, Kitamura discloses a selection inputting unit (figure 2, step S2) supplying said control-command issuing unit with an arbitrary selection that causes said control-command issuing unit to issue either of a control command causing said data-recording interrupting-resuming unit to perform the interruption and resumption of the recording, and a control command causing said data-recording interrupting-resuming unit not to perform the interruption and resumption of the recording.

In regard to claim 3, Kitamura discloses an interruption-probability judgment-result outputting unit (figure 6, element 4; paragraph 0200) outputs a result of said judgment; and a selection-inputting function control unit (figure 2, step S2) enabling said selection via said selection inputting unit; after said interruption-probability judgment-result outputting unit outputs said result of said judgment.

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In regard to claim 4, Kitamura discloses a selection-information creating unit creating appropriate selection information based on conditions including a data capacity to be written to said recording medium (paragraphs 0208 & 0209), when said interruption-probability judging unit judges that there is a probability of the interruption during a recording of data to said recording medium, the selection information being used to perform the recording without the interruption, and said interruption-probability judgment-result outputting unit further includes a selection-information outputting unit (figure 12, element 107) outputting said selection information along with said result of said judgment.

4. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

### *Conclusion*

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Response to Arguments*

6. Independent claim 1 has been amended to include the “test-writing unit” and “interruption-probability judging unit” of original claim 3. The applicant specifically points out that the interruption-probability judging unit makes a judgment of probability as to whether interruption will occur during a recording of data not during test-writing. It should be noted, however, that the phrase “making a judgment on whether or not there is a probability of the interruption during a recording” as claimed can be read in two different ways:

- a. making a judgment on whether or not there is a probability of the interruption during a recording
- b. making a judgment during a recording whether or not there is a probability of the interruption

Option “a” emphasizes that the interruption is made during recording, while option “b” emphasizes that the judgment is made during recording.

The applicant appears to suggest option “b”. However, in light of the applicant’s specification, the examiner declines to read option “b” because judgment is made “according to the result of the test-writing” (see figure 3, step S3), and judgment is not made during recording. Steps S7 and S12 clearly show that recording is performed a few steps after the judgment step. Furthermore, nowhere in the specification does the applicant provide support for “making a judgment during a recording” whether or not there is a probability of the interruption.

Therefore, in light of the applicant’s specification, the examiner is inclined to read option “a”, as applied in the previous Office Action.

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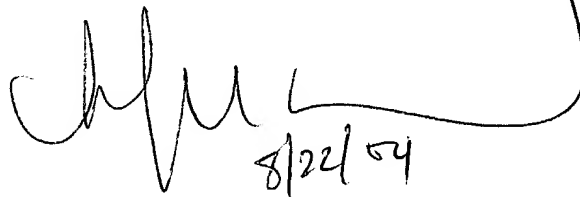
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Vincent Agustin whose telephone number is 703-305-8980.

The examiner can normally be reached on Monday-Friday 9:30-5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa Thi Nguyen can be reached on 703-305-9687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Peter Vincent Agustin  
Art Unit 2652  
August 17, 2004



8/22/04